



ERIC CARLSON D/B/A BRECKENRIDGE ADVENTURE TOURS

186 IBLA 319

Decided November 18, 2015



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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ERIC CARLSON D/B/A BRECKENRIDGE ADVENTURE TOURS

IBLA 2014-53

Decided November 18, 2015

Appeal from a decision of the Kremmling Field Office, Colorado, Bureau of Land Management, canceling Special Recreation Permit #CO-120-CO07-12-101.

Affirmed.

1. Public Lands: Special Use Permits--Special Use Permits--Federal Land Policy and Management Act of 1976: Applications: Generally

An exercise of the Secretary's discretionary authority to administer SRPs pursuant to section 302(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(b) (2012), must have a rational basis that is stated in the decision and supported by facts of record, which demonstrates it is not arbitrary, capricious, or an abuse of discretion. It is appellant's burden to show by a preponderance of the evidence that a challenged decision is in error.

APPEARANCES: Eric Carlson, Fort Collins, Colorado, *pro se*; Tracie A. Williamson, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE SOSIN

Eric Carlson, of Whitewater Addictions, doing business as Breckenridge Adventure Tours (Appellant), appeals from an October 30, 2013, decision to cancel Special Recreation Permit #CO-120-CO07-12-101 (SRP) issued by the Kremmling Field Office, Colorado, Bureau of Land Management (BLM). Appellant's SRP was for commercial recreation use of public lands in connection with guided whitewater floatboating and float fishing trips on the Upper Colorado River.

Because Appellant has not demonstrated error in BLM's decision, we affirm.

Background

BLM first issued an SRP to Appellant in February 2011, effective March 1, 2011, through October 30, 2011, for a one-year probationary period; BLM issued an Annual Operating Authorization, dated May 19, 2011, validating the 2011 SRP. The SRP specified that operations under the permit were subject to the Kremmling Field Office Special Recreation Policy (dated July 22, 2010) and required that trip logs and post-use reports be submitted by November 30. The SRP included a general term (General Term *a*) requiring compliance with “all Federal, State, and local laws; ordinances; regulations; orders; postings; or written requirements applicable to the area or operations covered by the Special Recreation Permit.” On December 15, 2011, BLM notified Appellant that he owed the use fee for the 2011 season. When Appellant failed to pay, BLM issued Bills for Collection on March 14, 2012, and March 20, 2012. On April 5, 2012, Appellant paid the use fee and a late fee.

After receiving Appellant’s payment for the 2011 season, BLM issued an Annual Operating Authorization to Appellant on April 6, 2012, validating the 2012 SRP, which BLM renewed for another one-year probationary period on May 29, 2012, effective April 1, 2012, through October 31, 2012.¹ The 2012 SRP also required Appellant to submit his post-use report on November 30, unless BLM granted an extension, and included General Term *a*. On December 7, 2012, BLM sent Appellant a bill for his 2012 post-use fee, which was due 30 days thereafter. BLM communicated with Appellant numerous times between January and June about his need to pay the post-use fee, including sending him a January 29, 2013, Bill for Collection and two demand letters dated April 1 and April 20, 2013.

Appellant submitted an application for an SRP for 2013, but in an email dated May 29, 2013, BLM informed Appellant that his application would not be issued “until last season is completed.” After Appellant paid his 2012 fees on August 1, 2013, BLM informed Appellant that he could “claim non use for 2013,” which would allow him to keep his permit, but that Appellant would have to pay a \$100 fee for non-use by October 31, 2013. BLM reminded Appellant that an application for the 2014 season would be due before the end of the month and required a \$50 application fee. Appellant responded on August 29, 2013, stating that he would request non-use and pay the non-use fee for 2013, and submit a renewal application and fee for 2014. Appellant never submitted a renewal application or paid the renewal and non-use fees.

¹ On Aug. 9, 2012, BLM completed the annual evaluation for the 2011 SRP, noting that Appellant had failed to timely pay his fees or submit his post-use report. In the comments section, BLM wrote: “Payment was late and bounced. Warned for speeding in parking lot. Recommend one more year of probationary status.”

On October 30, 2013, BLM gave Appellant an “unacceptable” rating on his 2012 evaluation and recommended that Appellant’s permit be cancelled. The evaluation included the following comment: “Have outstanding 2012 balance with Rancho del Rio.^[2] Was 6 months late paying 2012 postseason fee. Received violation for abandoned property at Inspiration Flats. Do not have a working mailing address, email, nor phone number on file. Recommend that we cancel this permit.” In a letter also dated October 30, 2013, BLM cancelled Appellant’s SRP, listing seven instances where Appellant had violated the conditions and stipulations of his permit:

- *Camped at Pumphouse without paying, until asked for payment on 3rd or 4th day.
- *Clients at Pumphouse Recreation Site were parked without [] parking passes.
- *BLM violation issued for abandoned camper at Inspiration Flats.
- *Post use payment for 2012 was late, and then check bounced. Balance finally paid on 8/1/2013.
- *In email on July 1, 2013, BLM asked for working email, address, and phone number. BLM still has not received a reply.
- *No preseason payment, paperwork, or non-use declaration for the 2013 season until after BLM contacted him in August.
- *No application or renewal fee for 2014 season.

Decision at unpaginated (unp.) 1-2. BLM stated that it was cancelling the SRP based on Appellant’s “continued violations of [his] permit stipulations during three years of probationary periods,” and noted that “[i]t is not in the public’s interest for the BLM to permit an outfitter that has business and/or administrative practices that result in terms and/or stipulation violations.” *Id.* at unp. 1.

This appeal followed.³

² Rancho Del Rio is a shuttle company used by Appellant. The company apparently complained to BLM in December 2012 about Appellant’s failure to pay for shuttle services.

³ As BLM notes in its Answer, Appellant did not serve a copy of his Notice of Appeal on the Office of the Regional Solicitor, in accordance with the Board’s regulation at 43 C.F.R. § 4.413(c), (d). Nor did Appellant file a Statement of Reasons (SOR) within 30 days of his Notice of Appeal, as required by 43 C.F.R. § 4.412(a). Although our regulations provide that the failure to comply with these requirements can result in summary dismissal of an appeal, 43 C.F.R. § 4.402, we will not exercise our discretion to dismiss Appellant’s appeal on that basis because we discern no prejudice to BLM.

(...continued)

Legal Framework

[1] SRPs are issued under the general authority of the Secretary of the Interior to administer use of the public lands, under section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), and BLM's implementing regulations. 43 U.S.C. § 1732(b) (2012); 43 C.F.R. Subpart 2932; *see Kevin Dieker d/b/a Rio Rafting, LLC*, 185 IBLA 334, 339 (2015). BLM, in exercising its discretion to issue, administer, and cancel SRPs, must have a rational basis that is stated in the decision and supported by facts of record demonstrating it is not arbitrary, capricious, or an abuse of discretion. *Jeremy Frick d/b/a Brush Canyon Outfitters*, 185 IBLA 276, 284 (2015). An appellant has the burden to show by a preponderance of the evidence that a challenged decision is in error. *Kevin Dieker d/b/a Rio Rafting, LLC*, 185 IBLA at 339; *Jess Ranking d/b/a West Tex-New Mex Hunting Services*, 176 IBLA 162, 165 (2008). As we explained in *Larry Amos d/b/a Winterhawk Outfitters, Inc.*, 163 IBLA 181, 188 (2004), in the context of a BLM decision denying renewal of an SRP: "The question before [the Board] is whether the record supports BLM's exercise of its discretionary authority."

BLM's regulations governing SRPs reiterate BLM's discretion to administer SRPs and specify that in deciding whether to issue an SRP BLM will consider various factors, including "[w]hether in the past you complied with the terms of your permit." 43 C.F.R. § 2932.26(f). The regulations further specify that the holder of an SRP must follow all stipulations included in the approved permit, *id.* § 2932.41; that violating the stipulations or conditions of an SRP is prohibited, *id.* § 2932.57(a)(2); and that BLM may amend, suspend, or cancel an SRP if the holder violates permit stipulations, *id.* § 2932.56(b).

Analysis

On appeal, Appellant admits he has "made mistakes, but I do learn from them." SOR at unp. 3. He states that he does not deserve to lose his permit; the mistakes that occurred will not happen again; and he has been "recreating at pumphouse for ten years now" and has "done way more good there than bad." *Id.*

Appellant addresses each of the seven violations identified in BLM's decision cancelling the SRP. He admits that the first four violations occurred, explaining the circumstances and reasons for the violations. For example, Appellant admits that he

(continued...)

See Tekxon Onshore Oil and Gas, LLC, 184 IBLA 134, 139 n.11 (2013) (citing *Red Thunder, Inc.*, 117 IBLA 167, 172-73 (1990)).

camped at the pumphouse site without paying, but explained that “[t]he payment envelope got mixed in with some paperwork and my employees never deposited it” and that he ultimately did pay. SOR at unp. 1. Appellant also admits that his clients parked without required parking passes, stating that he and his employees “were a little overwhelmed and could not keep track of every vehicle.” *Id.* He further admits to receiving a law enforcement violation notice for an abandoned camper, but claims that the camper was moved there for a family member and had nothing to do with his company. *Id.* at unp. 2. Appellant also concedes that his post-use payment for 2012 was late, but says that he was in contact with BLM the whole time and that he paid it as soon as he could. *Id.*

Appellant states that the remaining three violations do not accurately reflect all the facts. Appellant disagrees with BLM’s statement that Appellant did not keep BLM apprised of his contact information; Appellant admits, however, that he shut off his phone in April 2013, and explains that he was out of town when BLM attempted to send him a certified letter. *Id.* Appellant further disagrees with BLM’s statement that he did not file preseason paperwork for the 2013 season, stating that he “filed it in person at the Kremmling BLM office”; at the same time, Appellant acknowledges that he did not pay the fees. *Id.* Finally, Appellant claims that he faxed his 2014 application on September 1, 2013, but BLM did not tell him until several weeks later that no application had been received. *Id.* at unp. 2-3. While Appellant admits that he did not pay the fees, he states that he had “the application and payment ready to go but when the . . . [October 2013 government shutdown] was over is when I got the letter that my SRP was being revoked.” *Id.* at unp. 3.

BLM responds that the agency “made extensive efforts to help bring and/or allow Appellant the opportunity to come into compliance with his 2012 SRP,” and that “BLM spent a significant amount of resources and time to collect the 2012 post-use payment and maintain contact during the year.” Answer at 4. Despite these efforts, however, BLM states that Appellant “has clearly not complied with the terms of his SRP,” and “has demonstrated repeatedly over the course of the last two years that he has poor business practices and little []regard for following BLM rules for use of public lands and BLM permitting procedures.” *Id.* at 7. BLM therefore asks us to affirm its decision to cancel Appellant’s SRP.

The Board’s task here is to determine whether Appellant has met his burden to show that BLM erred in cancelling the SRP. *See, e.g., Kevin Dieker d/b/a Rio Rafting, LLC*, 185 IBLA at 339. We find no error in BLM’s decision.

Appellant admits to committing the first four violations specified by BLM in its Decision – i.e., failing to timely pay the camping fee at the pumphouse site, allowing clients to park at the site without appropriate permits, and leaving a camper

unattended at Inspiration Flats. In each of these instances, Appellant violated General Term *a* of his SRP, which required that he, and his clients, make every reasonable effort to ensure compliance with all applicable laws, ordinances, regulations, orders, postings, or written requirements. *See Answer at 8-10.*

Appellant claims he hand-delivered the 2013 application and faxed the 2014 application to BLM but offers no evidence to support his claims. SOR at unp. 2. As to his failure to keep BLM informed of his contact information, Appellant admits his phone was shut off and that he did not receive BLM's certified mailing because he was out of town. *Id.* Appellant was also late in submitting payment for his 2011 and 2012 SRPs, paying only after BLM sent multiple communications and demand letters, in violation of the regulations at 43 C.F.R. § 2932.32 ("You must pay the required fees before BLM will authorize your use and by the deadline or deadlines that BLM will establish in each case."). Appellant did not submit the non-use fee for the 2013 season by the deadline set by BLM, which BLM told him was required in order to keep his permit, or pay the renewal fee for his 2014 application. *See Answer at 14.*

The record demonstrates that Appellant violated his SRP and BLM regulations numerous times, and Appellant has provided no information that shows any error in BLM's decision. We therefore conclude that BLM was well within its discretion to cancel Appellant's permit under 43 C.F.R. § 2932.56(b).

Conclusion

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

_____/s/
Amy B. Sosin
Administrative Judge

I concur:

_____/s/
James K. Jackson
Administrative Judge